No. 82-1540

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, *et al.*,
Petitioners,

v.

ROBERTO QASIM, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the District of Columbia Court of Appeals

BRIEF FOR RESPONDENTS IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. Whether the Eleventh Amendment to the Constitution of the United States bars suit against an interstate agency in the Superior Court of the District of Columbia because that court was created under Article I, when the agency has waived its asserted sovereign immunity for tort claims arising from its proprietary functions, consented to suit in the United States District Courts, consented to suit in a court exercising Article I as well as Article III powers, consented to suit in accordance with the law of the District of Columbia, and engaged in litigation in the Superior Court for more than a decade.

2. Whether the District of Columbia Court of Appeals was correct in holding that language in an interstate compact giving the United States District Courts "original" jurisdiction over actions against the agency created by the compact may not be read as an exclusive jurisdictional grant precluding concurrent jurisdiction in the District Court and Superior Court over tort claims against the agency arising under local law.

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OPINION BELOW

The Opinion of the District of Columbia Court of Appeals, sitting *en banc,* has now been reported at 455 A.2d 904 (D.C. 1983)(*en banc*)("*Opinion*").

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant constitutional and statutory provisions are set forth as Appendix A (App.1a *et seq.*) herein.

COUNTERSTATEMENT OF THE CASE

By its petition for certiorari, the Washington Metropolitan Area Transit Authority ("WMATA") [1] asks this Court to review a unanimous *en banc* decision of the District of Columbia Court of Appeals which holds only that common law tort actions against WMATA may be brought in the Superior Court of the District of Columbia.

The Opinion below decided seven cases, all of which presented the same legal issues and had been consolidated on appeal in the District of Columbia Court of Appeals. In each case the plaintiff had filed a complaint in the Superior Court of the District of Columbia seeking money damages for personal injuries sustained in the District of Columbia, allegedly resulting from the negligence of WMATA and various co-defendants. In each case, WMATA admitted subject-matter jurisdiction in the Superior Court, but then late in the litigation moved to dismiss the actions on the ground that subject-matter jurisdiction was lacking. The seven cases reviewed by the District of Columbia Court of Appeals were all decided by the same Superior Court judge, and in each case that judge granted WMATA's motion to dismiss.[2]

The unanimous decision of the Court of Appeals reversing these dismissals confirmed prior Superior Court precedent and longstanding judicial practice in the District of Columbia. As noted by United States District Judge Gerhard A. Gesell,

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[1] WMATA is an interstate agency created by a compact between Maryland, Virginia, and the District of Columbia, and resides in all three areas for purposes of jurisdiction and venue. *See* Pub. L. No. 89-774, 80 Stat. 1324 (1966) ("the Compact"). WMATA's principal business activity is the planning, construction, and operation of the mass transit system (Metrobus and Metrorail) in the Washington, D. C. Metropolitan Area.

[2] *Qasim v. WMATA*, No. 6341-78 (D. C. Super. Ct. Nov. 5, 1981) (Murphy, J.); *Baker v. WMATA*, No. 3505-79 (D.C. Super. Ct. Nov. 25, 1981) (Murphy, J.); *Jones v. WMATA*, No. 12392-79 (D.C. Super. Ct. Nov. 30, 1981) (Murphy, J.); *Carter v. WMATA*, No. 8478-77 (D.C. Super. Ct. Dec. 4, 1981) (Murphy, J.); *Butterfield v. WMATA*, No. 16938-80 (D.C. Super. Ct. Dec. 10, 1981) (Murphy, J.); *Green v. WMATA*, No. 16861-80 (D.C. Super. Ct. Feb. 12, 1982) (Murphy, J.); *Artis v. WMATA*, No. 13485-79 (D.C. Super. Ct. Feb. 12, 1982) (Murphy, J.).

"[s]ince at least 1972, when then Superior Court Judge Penn decided *Quarles v. WMATA*, Civil Action No. 7286-73, it has generally been accepted that the Superior Court has concurrent jurisdiction with the District Court in this type of action. Many similar suits were brought in the Superior Court and proceeded to judgment." *Scott v. WMATA*, No. 82-0739 (D.D.C. June 15, 1982), *appeal docketed*, (D.C. Cir. Oct. 7, 1982), slip op. at 2-3. [3] The District of Columbia Court of Appeals has also consistently exercised jurisdiction over cases in which WMATA was the appellee, and on numerous occasions WMATA itself has invoked that court's jurisdiction through intervention or by seeking appellate review of Superior Court decisions.[4]

In its Opinion below, the Court of Appeals carefully considered and rejected the same challenges to its jurisdiction which WMATA now presents to this Court. With respect to WMATA's invocation of sovereign immunity and the Eleventh Amendment, the Court of Appeals properly concluded that Section 80 of the Compact waives immunity by establishing that WMATA shall be liable for torts "committed in the conduct of any proprietary function, in accordance with the law of the applicable signatory." *Opinion*, 455 A.2d at 906, (Pet. App. B, 4a). The District of Columbia is a signatory to the Compact, and the Court of Appeals noted that D.C. Code Ann. § 11-921(a)(1981), App. A., 3a, provides plenary Superior Court jurisdiction over all civil actions brought in the District of Columbia.[5] The Court of Appeals then held that Section 81 of

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[3] Judge Gesell's opinion in *Scott v. WMATA* appears as Appendix B (App. 4a *et seq.*) herein.

[4] *See, e.g., Potomac Electric Power Co. v. Public Service Commission*, Nos. 79-1159, 79-1106 (D.C. Ct. App. Feb. 16, 1983)(WMATA as intervenor); *WMATA v. L'Enfant Plaza Properties, Inc.*, 448 A.2d 864 (D.C. 1982); *WMATA v. Jones*, 443 A.2d 45 (D.C. 1981) (*en banc*); *Sledd v. WMATA*, 439 A.2d 464 (D.C. 1981); *WMATA v. Ward*, 433 A.2d 1072 (D.C. 1981); *White v. WMATA*, 432 A.2d 726 (D.C. 1981); *Cowden v. WMATA*, 423 A.2d 936 (D.C. 1980); *Queen v. D. C. Transit System, Inc.*, 364 A.2d 145 (D.C. 1976); *Fells v. WMATA*, 357 A.2d 395 (D.C. 1976).

[5] This jurisdictional grant to the Superior Court was provided by the Court Reform and Criminal Procedure Act of 1970, Pub. L. 91-358, 84 Stat. 473 (1970)("Court Reform Act"), which created the Superior Court. The avowed intent of the Act was to invest the Superior Court with jurisdiction "equivalent to that exercised by state courts." *Palmore v. United States*, 411 U.S. 389, 392 n.2 (1973).

the Compact, adopted prior to the creation of the Superior Court and granting the United States District Courts "original jurisdiction, concurrent with the Courts of Maryland and Virginia, of all actions brought by or against the Authority", did not bestow exclusive jurisdiction on the United States District Court for the District of Columbia over actions brought in the District of Columbia. *Opinion*, 455 A.2d at 907, (Pet. App. B, 6a-7a). The Court of Appeals held that no limiting language appeared in D.C. Code Ann. § 11-921(a) precluding Superior Court jurisdiction over tort claims against WMATA, and that accordingly no explicit statutory directive, unmistakable inference from legislative history, or clear incompatibility with federal interests prohibited concurrent Superior Court and District Court jurisdiction over questions of District of Columbia tort law involving WMATA. *Id.* WMATA seeks review of this unanimous *en banc* decision.

REASONS FOR DENYING THE WRIT

This case presents no pressing federal question requiring resolution by this Court. WMATA purports to discern some grave importance in the question of whether a resident of the District of Columbia may sue WMATA on a common law claim in an Article I court (the Superior Court) as well as in an Article III court (the United States District Court). Petition at 8. WMATA's extended and at times excursive discourse on the Eleventh Amendment simply obscures the two salient points. In Section 80 of the Compact, WMATA waived immunity from tort claims arising from its proprietary functions, subjecting itself to suit in accordance with the law of the applicable signatory, which in this case is the District of Columbia. *See* App. A, 1a-2a. By the terms of Section 81 of the Compact, WMATA has always been subject to suit in the court of general jurisdiction for the District of Columbia, and at the time the Compact was adopted, the court of general jurisdiction in the District of Columbia, the United States District Court, was a court exercising judicial functions under both Article I and Article III of the Constitution. *Palmore v. United States, supra; National Mutual Insurance Co. v. Tidewater Transfer Co.*, 337 U.S. 582 (1949). How the Eleventh Amendment is offended

when an agency which was amenable to suit in a court exercising both Article I and III powers is held to be amenable to suit in a court established under Article I is a question which WMATA's petition fails to answer.

Moreover, the impact of the Court of Appeals decision is confined to a relatively small number of cases. Although WMATA asserts that it will have to submit to "thousands of similar suits in the local courts of the District of Columbia", Petition at 8, WMATA simply ignores the fact that Section 81 of the Compact allows WMATA to remove any action to the United States District Court, which has original jurisdiction. *See* App. A at 2a; 28 U.S.C. §§ 1446, 1451. Accordingly, only those actions presently pending in the Superior Court are affected; from this day forward, if WMATA seriously believes it is prejudiced by an action proceeding in the Superior Court, it can simply remove that action to the United States District Court. Of course, the fact that WMATA chose not to remove these cases initially, nor the hundreds of other Superior Court actions that have proceeded to judgment over the last decade, speaks volumes about the "disadvantages" to Superior Court jurisdiction WMATA now professes.

Furthermore, WMATA's petition fails to point out that the reversal it seeks would frustrate the unmistakable intent of Congress underlying the Court Reform Act, deluge the United States District Court for the District of Columbia with common law tort cases raising no federal question whatever, and produce an absurd situation in choice of law cases where area courts must attempt to discern and apply the tort law made by the District of Columbia Court of Appeals to WMATA as that court would do, but with the Court of Appeals unable to render an opinion because WMATA is assertedly not subject to its jurisdiction. Accordingly, the petition for certiorari should be denied.

I. The Court of Appeals Properly Rejected WMATA's Eleventh Amendment Argument.

The Eleventh Amendment bars federal court suits against an unconsenting State brought by the State's own citizens or those of another State. *Edelman v. Jordan,* 415 U.S. 651

(1974). While an interstate agency created by compact, such as WMATA, may be able to invoke the Eleventh Amendment, *see Lake County Estates, Inc. v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979), in this case, any immunity WMATA might arguably have has been waived by WMATA's express consent to suit in federal court.[6] *See Petty v. Tennessee-Missouri Bridge Commission*, 359 U.S. 275 (1959).

Section 81 of the Compact unambiguously gives the United States District Courts original jurisdiction over all civil actions involving WMATA. App. A, 2a.[7] WMATA apparently contends, however, that it has consented to suit in all federal courts save one, the Superior Court of the District of Columbia, because that Court was created pursuant to Congress' Article I power.

As the Court of Appeals recognized, this argument cannot stand in light of the "unique bifurcated role" of the United States District Court for the District of Columbia in 1966 when the Compact was adopted. *Opinion*, 455 A.2d at 907, (Pet. App. B, 5a). At that time, the District Court was the District of Columbia's court of general jurisdiction, empowered to hear all "local" claims alleging more than $10,000 in damages, a function pursuant to Article I, as well as a court exercising Article III jurisdiction. *Palmore v. United States, supra*, 411

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[6] WMATA spends much of its petition in an argument designed to establish the proposition that it is an agency entitled to invoke the Eleventh Amendment. Petition at 11-19. As Judge Ferren's concurrence in the Opinion below indicates, the Court of Appeals did not decide this issue. Rather, the Court of Appeals assumed solely for the sake of argument that WMATA was an agency capable of invoking the Eleventh Amendment. *Opinion*, 455 A.2d at 907-08, (Pet. App. B, 7a-8a). Respondents submit that this analysis is appropriate, but in any event assert that WMATA may not invoke the Eleventh Amendment under this Court's test established in *Lake County Estates, supra*. The appropriate inquiry is whether the States intended WMATA to have the same immunity as the States themselves. In *Lake County Estates* the States filed briefs disclaiming any intent to confer immunity on the agency. 440 U.S. at 401. Similarly, in this case neither Maryland nor Virginia is before this Court to urge the sovereign immunity of WMATA.

[7] No limiting language appears in the Compact restricting federal court jurisdiction to certain districts. Indeed, counsel for WMATA acknowledged at oral argument before the Court of Appeals that all United States District Courts have subject-matter jurisdiction.

U.S. at 392 n.2. The Court of Appeals properly held that in Section 80 of the Compact WMATA consented to suit in each signatory's courts—i.e., for the District of Columbia, the general jurisdiction court—and that Section 81 of the Compact merely eliminated the $10,000 jurisdictional threshold for "local" actions in the United States District Court.[8] Thus, as the Court of Appeals held:

> The District Court for the District of Columbia did not need an independent grant of jurisdiction to empower it to hear WMATA actions. In its capacity as a court of general jurisdiction for the District of Columbia, it could already hear WMATA actions that met the $10,000 requirement.

Opinion, 455 A.2d at 907, (Pet. App. B, 5a).

Having plainly consented to suit in the federal courts and in the District of Columbia's general jurisdiction court in 1966, a court exercising Article I power, there is no basis for WMATA's present argument that it has not consented to suit in the Superior Court, the present Article I court for the District of Columbia exercising general jurisdiction.[9] Indeed, the arguments WMATA offers to the contrary, that the Eleventh

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[8] The Compact language allows suit in the courts of each signatory, but this plainly refers to courts which have jurisdiction over this type of action as determined by the signatory's jurisdictional statutes, i.e., the courts of general jurisdiction. WMATA seems to dispute this common sense proposition by claiming that the Compact authorizes suits against WMATA "in *all* the courts of Maryland and Virginia," thereby modifying jurisdictional rules in these States. Petition at 24. It is hard to believe WMATA intends this overreaching argument to be taken seriously; no one could rationally contend that a suit against WMATA for money damages could proceed initially in the Court of Appeals of Maryland or the Virginia Supreme Court, or in a special limited jurisdiction court, such as the Maryland Orphans' Court. *See* Md. Estates and Trusts Code Ann. § 2-101 *et seq.* (1981).

[9] Moreover, WMATA's own use of the Superior Court and the District of Columbia Court of Appeals for a variety of litigation over the last decade, including defense of claims, appellate review, intervention in pending cases, and the filing of civil complaints as plaintiff, *see generally* note 3 *supra* and accompanying text, constitutes a waiver of any Eleventh Amendment defense. *See, e.g., Vecchione v. Wohlgemuth,* 558 F.2d 150, 158 (3d Cir.), *cert. denied,* 434 U.S. 943 (1977); *Gallagher v. Continental Insurance Co.,* 502 F.2d 827, 830 (10th Cir. 1974); *Dagnall v. Department of Highways, State of Louisiana,* 466 F. Supp. 245, 246 (E.D. La. 1979).

Amendment would be compromised by suits in the Superior Court because that Article I court assertedly lacks "the constitutionally recognized guarantees of judicial impartiality" and is subject to congressional control, Petition at 20-23, have already been rejected by this Court in similar cases involving the District of Columbia court system.

In *Palmore v. United States, supra,* on review of a criminal conviction in the Superior Court of the District of Columbia, this Court held that the Constitution did not require all federal questions or all federal criminal prosecutions to be tried in an Article III court. 411 U.S. at 407. The Court concluded that a criminal defendant tried before a Superior Court judge was no more disadvantaged than any other defendant tried in a State court where the judge similarly lacked life tenure. *Id.* at 410. By parity of reasoning, no cognizable Eleventh Amendment interest of WMATA is offended by the Court of Appeals' decision. WMATA has consented to suit in the federal district courts, and the fact that it is also amenable to suit in the Superior Court, where the judges lack life tenure, surely poses no "disadvantage" not already present from the fact that WMATA has consented to suit in Maryland and Virginia, where the judges also lack the "protections" afforded by Article III.

Similarly, in *Swain v. Pressly,* 430 U.S. 372 (1977), this Court held that even though Superior Court judges did not enjoy the life tenure and salary protections afforded by Article III, collateral review of criminal convictions in the Superior Court did not offend the Suspension Clause. The Court held that *Palmore* "necessarily determines that the judges of the Superior Court of the District of Columbia must be presumed competent to decide all issues, including constitutional issues." *Id.* at 383. The Opinion below does no more than effectuate this language, holding in effect that Superior Court judges are competent to decide questions of local tort law when WMATA is a party.

In sum, no substantial question of Eleventh Amendment jurisprudence is presented in this case. The judicial power of the United States has already been properly extended to WMATA

by virtue of WMATA's consent in Section 81 of the Compact to suit in the United States District Courts. Since judges of the two State signators may also decide WMATA cases, and WMATA is not disadvantaged by the absence of Article III judges in these systems, no conceivable disadvantage suddenly springs into being from the absence of Article III judges in the Superior Court.[10] Accordingly, WMATA's Eleventh Amendment arguments were properly rejected by the Court of Appeals, and provide no basis for granting the petition.

II The Court of Appeals Properly Held that Section 81 of the Compact is Not A Grant of Exclusive Jurisdiction.

The Court of Appeals correctly held that the mere fact that Section 81 of the Compact did not mention the Court of General Sessions, a limited jurisdiction court existing at the time the Compact was adopted, could not transform the grant of original jurisdiction to the District Court into a grant of exclusive jurisdiction. *Opinion*, 455 A.2d at 907, (Pet. App. B, 5a-7a). The Court of Appeals properly looked to the grant of general jurisdiction contained in D.C. Code Ann. § 11-921(a), and upheld jurisdiction in both the Superior Court and the District Court in furtherance of this Court's presumption in favor of concurrent, rather than exclusive, federal jurisdiction. *See Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473 (1981); *Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962).

WMATA's petition presents no sound reason for reversal of the Court of Appeals' decision. The Court of Appeals found that there was no "explicit statutory directive", *Gulf Offshore Co., supra*, 453 U.S. at 478, precluding Superior Court jurisdiction over WMATA in the language of D.C. Code Ann. § 11-921(a). *Opinion*, 455 A.2d at 907, (Pet. App. B, 6a). Indeed, in Section 11-921(a) Congress provided that "the Superior

[10] *Cf. Nevada v. Hall*, 440 U.S. 410 (1979) (Sovereign immunity which a State may have in its own courts has no impact in the courts of another State). Although WMATA claims the Court of Appeals misapplied *Nevada v. Hall* because the District of Columbia is not a State, Petition at 19-20, this argument overlooks the fact that the Court of Appeals was construing the Compact's immunity provisions, and Section 1 of the Compact establishes that for purposes of interpreting the Compact the District of Columbia is treated as a "State". *See* App. A, 1a.

Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia." App. A, 3a.[11] Similarly, the Court of Appeals found no inference from the legislative history of the Court Reform Act to indicate that Congress did not intend the Superior Court to exercise jurisdiction over WMATA. *Opinion*, 455 A.2d at 907, (Pet. App. B, 6a).[12] To the contrary, this Court has already ruled that the intent to the Act was to invest "the local courts with jurisdiction equivalent to that exercised by state courts", reaching "all civil actions". *Palmore v. United States, supra*, 411 U.S. at 392 n.2. Finally, the Court of Appeals held that the fact that Maryland and Virginia courts exercise jurisdiction over WMATA and the fact that Congress had not acted to prevent the Superior Court from exercising jurisdiction over WMATA in the ten years that court had done so, *see* note 3 *supra*, demonstrated that there was "no clear incompatibility between Superior Court jurisdiction and federal interests." *Opinion*, 455 A.2d at 907, (Pet. App. B, 7a). Thus, the Court of Appeals' decision squarely accords with this Court's analytical model for assessing whether jurisdiction is concurrent or exclusive, and review is not warranted.

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[11] WMATA's petition asserts that D.C. Code Ann. § 11-924 (1981), which gives the Superior Court jurisdiction over violations of rules adopted under the Compact, indicates that Congress excluded civil jurisdiction over WMATA. Petition at 26. However, Section 11-924, adopted after the Court Reform Act, *see* Pub. L. No. 94-306, 90 Stat. 672 (1976), was enacted to fill a gap in the Superior Court's criminal jurisdiction, D. C. Code Ann. §11-923 (1981), which denied jurisdiction over regulations not applicable exclusively to the District of Columbia. *Hubbell v. United States*, 289 A.2d 879 (D.C. 1972). Compact rules, applicable to jurisdictions other than the District of Columbia , would have been outside the scope of Section 11-923 but for the existence of Section 11-924. Since Section 11-921, the civil jurisdictional grant with which this case is concerned, was far broader than the criminal jurisdictional grant, there was no need for a clarifying section.

[12] WMATA asserts that the absence of a conforming amendment to the WMATA Compact transferring jurisdiction from the District Court to the Superior Court somehow establishes that Congress did not intend the Superior Court to have jurisdiction over these local tort actions. Petition at 26. However, the absence of a conforming amendment is hardly surprising, since technically no transfer of jurisdiction was made. The District Court simply retained its original jurisdiction, and the retention of original jurisdiction surely did not preclude Congress from creating concurrent jurisdiction in the Superior Court, which it did through the broad grant of Section 11-921(a).

III. The Court of Appeals' Decision Comports With The Legislative Intent of the Court Reform Act, Aids in the Administration of Justice in the District of Columbia, and Prevents Judicial Disarray in Choice of Law Cases.

WMATA's petition obscures the fact that all of the cases involved in this proceeding are common-law tort actions against a common carrier, raising no federal question whatever on the merits.[13] In holding that these cases, all of which arise under District of Columbia law, may proceed in the Superior Court, the Court of Appeals furthered the legislative intent underlying the Court Reform Act, aided the administration of justice by providing a forum other than the United States District Court for the adjudication of these non-federal matters, and prevented the judicial disarray that would result in choice of law cases if the Court of Appeals could not decide these cases.

A. The Policy of the Court Reform Act

The Court of Appeals was unquestionably correct in holding that "the explicit purpose of the Court Reform Act of 1970 was to create one Superior Court with jurisdiction equivalent to that of a state court." *Opinion,* 455 A.2d at 907, (Pet. App. B, 7a). *See* H.R. Rep. No. 907, 91st Cong., 2d Sess. (1970) at 23 (goal of legislation to create "one trial court of general local jurisdiction, the Superior Court of the District of Columbia"). As this Court recognized in *Palmore:*

> The other part of the remedy [for the crisis in the judicial system of the District of Columbia] was to establish an entirely new court system with functions essentially similar to those of the local courts found in the 50 States of the Union with responsibility for trying and deciding those distinctively local controverses that arise under local law . . . having little, if any, impact beyond the local jurisdiction.

411 U.S. at 409.

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[13] This Court has consistently adhered to the principle that decisions on issues of localized character by the courts of the District of Columbia do not merit review. *Pernell v. Southall Realty,* 416 U.S. 363, 366 (1974); *General Motors Corp. v. District of Columbia,* 380 U.S. 553, 556 (1965).

By seeking review of the Court of Appeals' decision, WMATA necessarily argues that suits against it in the District of Columbia may only be filed in the United States District Court, even though the same or a similar action may proceed in local Maryland and Virginia courts of general jurisdiction. Although the Act plainly was intended to give the Superior Court jurisdiction equivalent to that exercised by state courts, *id.* at 392 n.2, the local court system of the District of Columbia is in no sense equivalent to state court systems if it cannot even apply local tort law to actions involving the area's largest common carrier. The Court of Appeals' decision simply prevents WMATA from transforming the Superior Court into a local limited jurisdiction court of the sort that existed prior to the Court Reform Act.

B. Administration of Justice in the District of Columbia

This Court has also recognized that a fundamental purpose of the Court Reform Act was to:

> [R]elieve the regular Art. III courts, that is, the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit, from the smothering responsibility for the great mass of litigation, civil and criminal, that inevitably characterizes the court system in a major city and to confine the work of those courts to that which, for the most part, they were designed to do, namely, to try cases arising under the Constitution and the nationally applicable laws of Congress.

Palmore, supra, 411 U.S. at 408-09.

Obviously, there is nothing genuinely federal about the personal injury litigation WMATA seeks to confine to the United States District Court. A tort action brought by a District resident against a District agency for an injury sustained in the District which will be decided on the basis of local District of Columbia law logically should proceed in the Superior Court, the District's local court of general jurisdiction. By reaching the result it did, the Court of Appeals confirmed this eminently reasonable proposition. WMATA's petition for review, on the

other hand, proceeds on the assumption that every "fender-bender" involving a WMATA vehicle must be tried in the United States District Court. A more complete perversion of what Congress sought to accomplish with the Court Reform Act can hardly be imagined.

C. Choice of Law Cases

The Opinion below also prevents the judicial disarray that would result if the Court of Appeals were denied jurisdiction over WMATA actions while the Maryland and Virginia state courts and the United States District Courts retained jurisdiction. In each of the cases considered by the Court of Appeals the injury occurred in the District of Columbia. Accordingly, Maryland and Virginia state courts would, under their choice of law rules, apply District of Columbia tort law, as would the United States District Courts. *See Klaxon Co. v. Stentor Electric Manufacturing Co.*, 313 U.S. 487 (1941).[14] Similarly, the United States District Court for the District of Columbia must apply local tort law as determined by the Superior Court and the District of Columbia Court of Appeals. *Higgins v. WMATA*, 507 F. Supp. 984 (D.D.C. 1981); *In re Air Crash Disaster*, 476 F. Supp. 521, 526 n.11 (D.D.C. 1979).

Accordingly, in cases where the injury occurred in the District of Columbia, every court in the area would attempt to apply the law it believes the District of Columbia Court of Appeals would apply; except that, under WMATA's interpretation of the Compact, the District of Columbia Court of Appeals could never apply any law to WMATA, because WMATA is assertedly never subject to that court's jurisdiction. It is difficult to imagine a more ludicrous situation than two state court systems and the federal courts attempting to discern, apply, and decide questions of District of Columbia tort law with the court that is responsible for making that law unable to render an opinion in the field. The Court of Appeals' decision prevented this unseemly result, and this Court should do likewise by denying the writ.

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[14] Maryland and Virginia courts both apply the substantive law of the place of the wrong in choice of law cases. *Frericks v. General Motors Corp.*, 274 Md. 288, 336 A.2d 118 (1975); *McMillan v. McMillan*, 219 Va. 1127, 253 S.E.2d 662 (1978).

CONCLUSION

For the foregoing reasons, the writ of certiorari should be denied.

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CERTIFICATE OF SERVICE

In accordance with Rules 22.1 and 28.3 of the Rules of the Supreme Court of the United States, I hereby certify that three copies of the foregoing "Brief for Respondent in Opposition to the Petition for Writ of Certiorari to the District of Columbia Court of Appeals" were mailed by first-class United States mail, postage prepaid, to the following counsel of record for the Petitioner on this 15th day of April, 1983:

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APPENDIX A

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Article I, § 8, cl. 9:

> The Congress shall have Power . . . To constitute Tribunals inferior to the supreme Court;

United States Constitution, Article I, § 8, cl. 17 (in part):

> The Congress shall have Power . . . To exercise exclusive Legislation in all Cases whatsoever, over such District . . . as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States . . .

United States Constitution, Article III, § 1:

> The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

United States Constitution, Amendment XI:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

WMATA Interstate Compact, Section 1 (in part):

Definitions

. . .

(d) "Signatory" means the State of Maryland, the Commonwealth of Virginia and the District of Columbia;

(e) "State" includes District of Columbia;

. . .

WMATA Interstate Compact, Section 12 (in part):

Enumeration

12. In addition to the powers and duties elsewhere described in this Title, the Authority may:

(a) Sue and be sued;

. . .

WMATA Interstate Compact, Section 80:

Liability for contracts and torts

80. The Authority shall be liable for its contracts and for its torts and those of its Directors, officers, employees and agent committed in the conduct of any proprietary function, in accordance with the law of the applicable signatory (including rules on conflict of laws), but shall not be liable for any torts occurring in the performance of a governmental function. The exclusive remedy for such breach of contracts and torts for which the Authority shall be liable, as herein provided, shall be by suit against the Authority. Nothing contained in this Title shall be construed as a waiver by the District of Columbia, Maryland, Virginia and the counties and cities within the Zone of any immunity from suit.

WMATA Interstate Compact, Section 81:

Jurisdiction of Courts

81. The United States District Courts shall have original jurisdiction, concurrent with the Courts of Maryland and Virginia, of all actions brought by or against the Authority, and to enforce subpoenas issued under this Title. Any such action initiated in a State Court shall be removable to the appropriate United States District Court in the manner provided by Act of June 25, 1948, as amended (28 U.S.C. 1446).

WMATA Interstate Compact, Section 85 (in part):

Construction and severability

85. . . It is the legislative intent that the provisions of this Title be reasonably and liberally construed.

District of Columbia Code, Title 11, Chapter 7 (1981)(in part):

§ 11-721. Orders and Judgments of the Superior Court.

(a) The District of Columbia Court of Appeals has jurisdiction of appeals from—

(1) all final orders and judgments of the Superior Court of the District of Columbia;

. . .

District of Columbia Code, Title 11, Chapter 9 (1981) (in part):

§ 11-921. Civil jurisdiction

(a) Except as provided in subsection (b), the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia . . .

. . .

§ 11-923. Criminal jurisdiction; commitment.

. . .

(b)(1) Except as provided in paragraph (2), the Superior Court has jurisdiction of any criminal case under any law applicable exclusively to the District of Columbia.

. . .

§ 11-924. Jurisdiction with respect to violations of the Rules and Regulations of the Washington Metropolitan Area Transit Authority

The Superior Court has jurisdiction with respect to any violation, committed in the District of Columbia, of the rules and regulations adopted by the Washington Metropolitan Area Transit Authority under Section 76(e) of Title III of the Washington Metropolitan Area Transit Regulation Compact.

APPENDIX B

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 82-0739

CHARLES O. SCOTT,
Plaintiff,

v.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY,
Defendant/Cross-Defendant;

JOSEPH N. WILKINSON and
YVONNE B. CRAFT,
Defendants/Cross-Plaintiff.

MEMORANDUM

Defendant Washington Metropolitan Area Transit Authority ("WMATA") has moved to dismiss as time-barred plaintiff's action to recover for injuries allegedly suffered while a passenger on a bus operated by WMATA. Plaintiff acknowledges this action was commenced after the three-year statute of limitations had expired, see D. C. Code § 12-301(8) (1981 ed.), but nevertheless opposes the motion on the ground that the time for filing the action should be deemed tolled given the special circumstances recited below.

Plaintiff was allegedly injured on July 21, 1977, and filed suit in the Superior Court of the District of Columbia on September 5, 1979, well within the statute of limitations. On February 23, 1982, two days prior to the scheduled commencement of trial in Superior Court, but after the statute had

run, WMATA filed a motion to dismiss on the ground that the Court lacked jurisdiction over the action under the terms of the Washington Metropolitan Area Transit Authority Compact, D.C. Code § 1-2431 ¶81 (1981 ed.). The Superior Court has declined to rule on the motion, apparently pending resolution by the District of Columbia Court of Appeals of the question of the Superior Court's jurisdiction in suits brought against WMATA which had unexpectedly arisen in other but similar litigation. On March 15, 1982, approximately three weeks after the motion to dismiss was filed in Superior Court, plaintiff commenced this action in the Distrit Court. Because this action was filed in this Court over four years after the incident giving rise to plaintiff's injuries it is barred by the statute of limitations unless the statute was tolled by the pendency of the Superior Court action.

Filing suit in a court that lacks jurisdiction will not generally toll the statute of limitations. In the Supreme Court's traditional formulation:

> If a plaintiff mistakes his remedy, in the absence of any statutory provisions saving his rights, or where from any cause . . . the action abates or is dismissed, and, during the pendency of the action, the limitation runs, the remedy is barred. *Willard v. Wood,* 164 U.S. 502, 523 (1896).

See also Dupree v. Jefferson, 666 F.2d 606, 610 (D.C. Cir. 1981). But if the prior action was sufficient to place the defendant on notice of plaintiff's claim—thus fulfilling the purpose of the statute of limitations, the limitations period may be tolled in the interests of fairness in some circumstances. *See American Pipe & Construction Co. v. Utah,* 414 U.S. 538 (1974); *Burnett v. New York Central R. Co.,* 380 U.S. 424 (1965). In particular, filing suit in the wrong court in the mistaken, but reasonable belief that that court has jurisdiction has been recognized as an equitable factor that may toll the statute of limitations. *See Fox v. Eaton Corp.,* 615 F.2d 716, 719 (6th Cir. 1980).

The equities of this particular action militate strongly against strict application of the limitations period. Since at least

1973, when then Superior Court Judge Penn decided *Quarles v. WMATA,* Civil Action No. 7286-73, it has generally been accepted that the Superior Court has concurrent jurisdiction with the District Court in this type of action. Many similar suits were brought in the Superior Court and proceeded to judgment. Whether WMATA has a legal right to dismissal of the Superior Court action is a question the Court need not decide; at a minimum, however, plaintiff's assumption that the Superior Court had jurisdiction was entirely reasonable. Plaintiff very promptly initiated suit in this Court after the motin to dismiss was filed in the Superior Court. Under all the circumstances, the Court finds that the statute of limitations was tolled by the pendency of the Superior Court action and the motion to dismiss must therefore be denied.

An appropriate order is filed herewith.

/s/ GERHARD A. GESELL
UNITED STATES DISTRICT JUDGE

June 14, 1982.
[Filed 6-15-82]